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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046965
Party	Defendant ELM Development, LLC
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	07/29/2008
Attachments	2008 07 29 Amended Answer.pdf (6 pages)(44000 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Gander Mountain Company,)	Cancellation No. 92046965
)	
Petitioner,)	Mark: THE GANDERGUNMEN
)	
v.)	Reg. No. 3,086,200
)	
ELM Development, LLC,)	Reg. Date: April 25, 2006
)	
Registrant.)	
)	

AMENDED ANSWER

COMES NOW REGISTRANT, ELM Development, LLC, to answer Petitioner's Petition for Cancellation in this proceeding. Any and all allegations not specifically admitted herein are denied. The numbered allegations will be responded to below:

1. Registrant admits that Petitioner has been engaged in the marketing, sale and promotion of retail store services in the fields of hunting, fishing and camping equipment and clothing and apparel under the GANDER MOUNTAIN mark. As to the remainder of the allegations in Paragraph 1 of the Amended Petition for Cancellation, Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 and, therefore, denies same.

2. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Amended Petition for Cancellation and, therefore, denies same.

3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Amended Petition for Cancellation and, therefore, denies same.

4. Registrant admits the allegations contained in Paragraph 4 of the Amended Petition for Cancellation.

5. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Amended Petition for Cancellation and, therefore, denies same.

6. Registrant admits the allegations contained in Paragraph 6 of the Amended Petition for Cancellation.

7. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Amended Petition for Cancellation and, therefore, denies same.

8. Registrant denies the allegations contained in Paragraph 8 of the Amended Petition for Cancellation.

9. Registrant denies the allegations contained in Paragraph 9 of the Amended Petition for Cancellation.

10. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Amended Petition for Cancellation and, therefore, denies same.

11. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Amended Petition for Cancellation and, therefore, denies same.

12. Registrant denies the allegations contained in Paragraph 12 of the Amended Petition for Cancellation.

13. Registrant denies the allegations contained in Paragraph 13 of the Amended Petition for Cancellation.

14. Registrant denies the allegations contained in Paragraph 14 of the Amended Petition for Cancellation.

15. Registrant denies the allegations contained in Paragraph 15 of the Amended Petition for Cancellation.

16. Registrant denies the allegations contained in Paragraph 16 of the Amended Petition for Cancellation.

17. Registrant admits the allegations contained in Paragraph 17 of the Amended Petition for Cancellation.

18. Registrant admits that on June 20, 2005, Registrant filed a Statement of Use with the USPTO in connection with Application Serial No. 78/338,333, and that this Statement of Use speaks for itself.

19. Registrant admits that on August 10, 2005, the USPTO issued an Office Action in connection with Application Serial No. 78/338,333, and that this Office Action speaks for itself.

20. Registrant admits that on February 10, 2006, Registrant filed a Response to Office Action with the USPTO in connection with Application Serial No. 78/338,333, and that this Response to Office Action speaks for itself.

21. Registrant admits that on March 18, 2006, the USPTO issued a Notice of Acceptance of Statement of Use in connection with Application Serial No. 78/338,333, and that this Notice of Acceptance of Statement of Use speaks for itself. Registrant admits that on April 25, 2006, the USPTO issued a Certificate of Registration for Registration No. 3,086,200.

22. Registrant admits the allegations contained in Paragraph 22 of the Amended Petition for Cancellation.

23. Registrant denies the allegations contained in Paragraph 23 of the Amended Petition for Cancellation.

24. Registrant denies the allegations contained in Paragraph 24 of the Amended Petition for Cancellation.

25. Registrant denies the allegations contained in Paragraph 25 of the Amended Petition for Cancellation.

26. Registrant denies the allegations contained in Paragraph 26 of the Amended Petition for Cancellation.

27. Registrant denies the allegations contained in Paragraph 27 of the Amended Petition for Cancellation.

28. Registrant denies the allegations contained in Paragraph 28 of the Amended Petition for Cancellation.

29. Registrant denies the allegations contained in Paragraph 29 of the Amended Petition for Cancellation.

AFFIRMATIVE DEFENSES

30. Registrant repeats and re-alleges the averments set forth in Paragraphs 1 through 29 herein as if fully set forth again at length.

31. Petitioner has failed to state a claim upon which relief can be granted.

32. Registrant's application for the mark THE GANDERGUNMEN filed December 9, 2003 for entertainment services, namely, production and distribution of a hunting show has priority over Petitioner's application Serial No. 771074177 to register the mark GANDER MTN. for "entertainment in the nature of on-going television programs with outdoor themes" filed January 2, 2007 and alleging a date of first use in commerce of January 3, 2004 in view of Registrant's earlier effective filing date of December 9, 2003.

33. Petitioner's marks are composed primarily of the term GANDER which is the common commercial name for and defined as a male goose. As such, the term GANDER must

be considered generic and consequently afforded a narrow scope of protection in connection with any goods or services related specifically to goose hunting under 15 U.S.C. 5 1065(4). 20. In view of the overall differences in the appearance, suggestion, connotation and sound when comparing Registrant's THE GANDERGUNMEN and the Petitioner's GANDER MTN, and GANDER MOUNTAIN marks there is no possibility of consumer confusion under Trademark Act 5 2(d), 15 U.S.C. 1052(d).

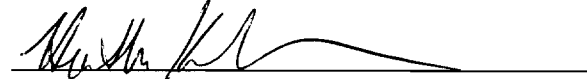
WHEREFORE, Registrant requests that Petitioner's claims be dismissed, with prejudice, and the registration of the mark THE GANDERGUNMEN maintained.

It is believed that no fee is required for filing this paper. In the event that any fee is required, the Commissioner of Trademarks is authorized to charge the underpayment or any fees in connection herewith to Deposit Account No. 13-2725.

Respectfully submitted,

ELM Development, LLC

By its attorneys,



Andrew S. Ehard

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Date: July 29, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing AMENDED ANSWER was served upon the following attorney of record for Applicant by First Class Mail, this 29 day of July, 2008:

Kevin Ueland
Dorsey & Whitney LLP
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50 South Sixth Street
Minneapolis, MN 55402



Heather Kliebenstein

CERTIFICATE OF FILING

I hereby certify that this AMENDED ANSWER is being filed electronically with the United States Patent and Trademark Office's Electronic System for Trademark Trials and Appeals (ESTTA) on this 29 day of July, 2008.



Heather Kliebenstein